



March 28, 2001

Mr. Michael J. Consentino
City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2001-1232

Dear Mr. Consentino:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145391.

The Bryan Police Department (the "department") received a request for various items of personnel information relating to a specified department police officer. You state that you are "releasing the public information responsive" to the request. You claim, however, that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the representative sample of information submitted to us.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code applies to civil service cities and contemplates two different types of

¹ We assume that you have released all information responsive to the request, except that information contained in the department's internal personnel files.

² We assume that the "representative sample" of internal personnel file records submitted to this office is truly representative of the requested internal personnel file records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize, the withholding of, any other requested internal personnel file records to the extent that those records contain substantially different types of information than that submitted to this office.

personnel files, one that the civil service director or the director's designee is required to maintain as part of the police officer's civil service file (the "(a)" file), and one that the department may, but is not required to, maintain for its own internal use (the "(g)" file). Local Gov't Code § 143.089(a), (g).

The (a) file must contain certain specified items, including "any letter, memorandum, or document relating to . . . any misconduct [by the officer] if the misconduct resulted in disciplinary action [by the city police department] in accordance with [chapter 143 of the Local Government Code]." *Id.* § 143.089(a)(2). The (a) file also must contain "any letter, memorandum, or document relating to . . . the periodic evaluation of [the officer] by a supervisor." *Id.* § 143.089(a)(3). Documents relating to any alleged misconduct or disciplinary action taken must be removed from the (a) file if the city police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *Id.* § 143.089(b), (c). Thus, subsections (a)-(c) limit the content of the (a) file. Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by a city police department for its use (a (g) file), and the court addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. As indicated above, however, in cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place "any letter, memorandum, or document relating to" the misconduct in the personnel file maintained under section 143.089(a). Such records contained in the (a) file are not confidential under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). We note the legislative purpose of section 143.089 as stated by the *City of San Antonio* court:

All parts of section 143.089 are quite obviously designed to work in harmony with each other and in harmony with the disclosure provisions of the [Public Information] Act under the general legislative policy that allegations of misconduct made against a police officer shall not be subject to compelled

disclosure under the Act unless they have been substantiated and resulted in disciplinary action.

851 S.W.2d at 949. You represent that the submitted information is from the (g) file maintained by the department for its internal use. We therefore agree that the submitted information is confidential under section 143.089(g) and must be withheld.³ Consequently, the department must withhold the information from public disclosure based on section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

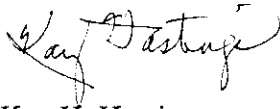
³ However, it is not clear from the submitted information that you referred the requestor to the director or the director's designee of the firefighters' and police officers' civil service in compliance with section 143.089(g). Please note that you are required to make such a referral when a request is made to you for information which is maintained in the police officer's personnel file.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/RJB/seg

Ref: ID# 145391

Encl. Submitted documents

cc: Mr. Travis B. Bryan, III
Youngkin, Catlin, Bryan, Stacy & Dillard
P.O. Box 4629
Bryan, Texas 77805
(w/o enclosures)